APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1974

No. 74-3663
Summary Calendar

D. C. Docket No. 74-351-CR-PF

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MELVYN GREENSPAHN,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

Before COLEMAN, AINSWORTH and SIMPSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

March 11, 1975

Issued as Mandate:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 74-3663
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee

versus

MELVYN GREENSPAHN,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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(March 11, 1975)

Before COLEMAN, AINSWORTH and SIMPSON, Circuit Judges.

PER CURIAM: Melvyn Greenspahn appeals from his conviction on four counts of wilful failure to file income

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*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

tax returns for the years 1968-1971, in violation of 26 U.S.C. §7203. His sole contention on appeal concerns the sufficiency of the evidence to support his conviction. We affirm.

A review of the record shows that the government put on strong evidence, albeit circumstantial, from which the fact-finder could reasonably conclude that the evidence is inconsistent with the hypothesis of Greenspahn's innocence. United States v. Warner, 5 Cir., 1971, 441 F.2d 821, 825.

We find it difficult to conclude that the Internal Revenue Service simply lost, as Greenspahn contends, his tax returns for all the years in question. Furthermore, the Internal Revenue Service records, while showing that Greenspahn did file and make payments on his 1967 return, do not indicate that any other payments were ever made. Greenspahn, while contending he did file his returns, was unable to produce any records of cash disbursements to the Internal Revenue Service except those in 1967 or any copies of the returns except an incomplete 1969 return. Although Greenspahn's protestations of innocence are plausible, it is the fact-finder's province to resolve factual disputes and the credibility of witnesses. The court, sitting without a jury, disbelieved Greenspahn. We decline to upset that finding where the evidence is sufficient to support a showing of wilful failure to file tax returns.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

OFFICE OF THE CLERK

April 9, 1975

TO ALL COUNSEL OF RECORD

Re: No: 74-3663 — U. S. A. Vs. Melvyn Greenspan

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH
CLERK

By /s/ Clare F. Sachs
Deputy Clerk

cc: Mr. E. David Rosen
Mr. Sam Spector
Mr. Robert W. Rust
Ms. Marshal L. Lyons